

REMARKS

This amendment is responsive to the Office Action dated March 15, 2002. Applicants have amended claims 1 and 11, have canceled claims 4, 5, 12 and 13 and have added claims 16-19. Claims 1-3, 6-11 and 14-19 are pending. A version of the amended claims showing changes pursuant to 37 CFR § 1.121(c)(ii) is attached. In the attached version of the amended claims, Applicant has used underlines to indicate inserted matter and brackets to indicate deleted matter.

Claim Rejection Under 35 U.S.C. § 102

In the Office Action, the Examiner rejected claims 1 and 11 under 35 U.S.C. 102(b) as being anticipated by Gullino et al. (US 3,897,751). Claims 1 and 11 have been amended.

Claim Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 2-4 and 6-8 under 35 U.S.C. 103(a) as being unpatentable over Gullino in view of Peterson (US 5,988,110) and further in view of Hooper, Jr. (US 5,349,924). The Examiner also asserted Gullino in view of Peterson and Hooper, Jr. against claims 9, 14 and 15. The Examiner further rejected claims 5 and 10 under 35 U.S.C. 103(a) as being unpatentable over Gullino in view of Wyatt et al. (US 4,508,123). The Examiner also asserted Gullino in view of Wyatt et al. against claims 12 and 13. The Applicant traverses the rejections.

In regard to claims 2 through 6, claims 4 and 5 have been cancelled. Claim 1, upon which claims 2, 3 and 6 depend, has been amended. In regard to claims 12 through 15, claims 12 and 13 have been cancelled. Claim 11, upon which claims 14 and 15 depend, has been amended.

Top Panels

Claims 2, 3, 7-10 and 14-15 recite a first top panel hingedly coupled to the housing. Claims 2, 3, 7-10 and 15 further recite a second top panel hingedly coupled to the housing, the first and second top panels being selectively positionable to cover at least a portion of the top opening of the housing. The Examiner rejected claims 2, 3, 7-10 and 14-15 as unpatentable over Gullino in view of Peterson and further in view of Hooper, Jr.

The Examiner acknowledged that Gullino and Peterson disclose only a single top panel, and that Gullino does not disclose a panel hingedly attached. In addition, the Examiner recognized that Gullino as modified by Peterson would not provide an apparatus having two top panels hingedly attached, as required by claims 2, 3, 7-10 and 15. The Examiner asserted, however, that Hooper, Jr. discloses two hingedly attached doors and that it would have been obvious to one of ordinary skill in the art to apply the teachings of Hooper, Jr. to the invention of Gullino as modified by Peterson. The Examiner further suggested that the combination of elements of Gullino, Peterson and Hooper, Jr. would “better enable the handler to reach and manipulate the animals as needed during treatment.” The Examiner also asserted that the combination of elements of Gullino and Peterson would “make the interior of the cage, and therefore the animal, more accessible.”

Claims 2 and 3 depend upon claim 1, claims 8-10 depend upon claim 7 and claims 14-15 depend upon claim 11. Claims 1, 7 and 11 are in condition for allowance, and therefore claims 2-3, 8-10 and 14-15 are also in condition for allowance.

It is well established that the Examiner bears the burden of establishing a prima facie case of obviousness. In re Oetiker, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). In doing so, the Examiner must determine whether the prior art provides a “teaching or suggestion to one of ordinary skill in the art to make the changes that would produce” the claimed invention. In re Chu, 36 USPQ2d 1089, 1094 (Fed. Cir. 1995). A prima facie case of obviousness is established only when this burden is met.

The Court of Appeals for the Federal Circuit recently addressed the evidentiary standard required to uphold an obviousness rejection in the case of In re Lee, 61 USPQ2d 1430 (Fed. Cir. 2002). In that case, the Federal Circuit stated: “This factual question of motivation is material to patentability, and [can] not be resolved on subjective belief and unknown authority. Id. at 1434.

The Court of Appeals for the Federal Circuit has made clear that motivation to combine references must be found in the prior art, and that it is impermissible hindsight for the Examiner to use the motivation stated in the Applicant’s own disclosure as a blueprint to reconstruct the claimed invention from the prior art. See Interconnect Planning Corp. v. Feil, 227 USPQ 543 (Fed. Cir. 1985); In re Fine, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); In re Gorman, 18 USPQ 2d

1885, 1888 (Fed. Cir. 1991); Al-Site Corp. v. VSI International, Inc., 50 USPQ2d 1161, 1171 (Fed. Cir. 1999).

A patentable invention may arise from a combination of elements found in the prior art. It is therefore not sufficient for the Examiner merely to identify individual components of an invention in multiple references. The Examiner must demonstrate that a skilled artisan, with no knowledge of the Applicant's invention, would have selected the components for combination in the manner claimed. In re Kotzab, 55 USPQ2d 1313, 1316-18 (Fed. Cir. 2000).

Gullino, Peterson and Hooper, Jr. include no teaching or suggestion that the various elements of the references ought to be combined to produce the Applicant's invention. In particular, Gullino, Peterson and Hooper, Jr. include no teaching or suggestion that would have guided one skilled in the art to combine two hingedly attached doors to cover at least a portion of a top opening of a housing. Hooper, Jr. discloses two hinged doors 35a and 35b to cover separate door openings 48 and 50 on a front housing sidewall 20. Hooper, Jr. does not disclose two hingedly attached doors that are selectively positionable to cover at least a portion of an opening, as recited in claims 2-3, 7-10 and 15. Nor does Hooper, Jr. teach or suggest that the opening may be on the top of the housing, as recited in 2-3, 7-10 and 14-15.

Gullino and Peterson do not suggest the possibility of multiple doors that may cover a top opening, or that the doors may be selectively positionable. Peterson does not suggest the presence of more than one door (which Peterson calls a "door section" or a "section"), and Gullino does not suggest the presence of more than one cover.

Gullino, Peterson and Hooper, Jr. include no teaching or suggestion that multiple doors would "better enable the handler to reach and manipulate the animals as needed during treatment." Peterson and Hooper, Jr. do not discuss the administration of treatment of any kind, not do Peterson and Hooper, Jr. suggest anything pertaining to handling or manipulation of animals during treatment. Gullino, which discloses a cover that is not hingedly attached, likewise does not suggest anything pertaining to handling or manipulation of animals during treatment. On the contrary, the cover in Gullino is anchored in place, precluding handling or manipulation of animals. Ready accessibility to the animal is not a concern of Gullino. The Examiner's purported motivation to combine references is not found within the references.

The only place in the evidentiary record before the Examiner that includes a motivation to incorporate two top panels hingedly coupled to the housing is within Applicant's own disclosure. Similarly, the only place in the evidentiary record before the Examiner that includes a motivation to incorporate two top panels selectively positionable to cover at least a portion of a top opening of the housing is within Applicant's own disclosure. The Applicant's own disclosure may not be used as a blueprint to reconstruct the claimed invention from the prior art, nor may the Examiner's subjective belief be used to support motivation to combine references. In re Lee, 61 USPQ2d at 1434.

Clasp

Claim 3 recites a clasp configured to secure a top panel in a closed position. Claim 3 depends upon claim 2, which recites a first top panel and a second top panel hingedly coupled to a housing, the panels being selectively positionable. The Examiner rejected claim 3, asserting that Gullino discloses a clasp 20 to secure the top panel in a closed position.

Claim 3 depends upon claim 2, which in turn depends upon claim 1. Claims 1 and 2 are in condition for allowance, and therefore claim 3 is also in condition for allowance.

Furthermore, Gullino does not disclose a clasp. Items 20 are screw devices that "firmly anchor the base 12, the wire mesh screen 13, and the four walls 14 together" (column 2, lines 44-46). Screw devices 20 do not couple to cover 16, and do not secure cover 16 in a closed position. Moreover, cover 16 is not hingedly coupled to a housing and selectively positionable, as required by claim 3. The Examiner's reliance upon Gullino is misplaced.

Covering top opening

Claims 8 and 15 describe a first top panel and a second top panel that, when in the closed position, cover less than one hundred percent of the top opening of the housing. The Examiner rejected claims 8 and 15 as unpatentable over Gullino in view of Peterson and further in view of Hooper, Jr.

Neither Gullino nor Peterson disclose any panels that, in a closed position, cover less than one hundred percent of the top opening. The Examiner asserted, however, that Hooper, Jr. discloses two hingedly attached doors 35a, 35b covering less than one hundred percent of the

side opening. The Examiner further suggested that the combination of elements of Gullino, Peterson and Hooper, Jr. would “better enable the handler to reach and manipulate the animals as needed during treatment.”

As noted above, Hooper, Jr. does not disclose two hingedly attached doors to cover at least a portion of an opening, as recited in claims 8 and 15. Nor does Hooper, Jr. teach or suggest that the opening may be on the top of the housing, as recited in claims 8 and 15. More particularly, Hooper, Jr. does not disclose two hingedly attached doors 35a, 35b covering less than one hundred percent of a side opening. On the contrary, FIGS. 1, 4, 5, 6, and 7 of Hooper, Jr. depict one or more of the attached doors in the closed position. In each case, the corresponding opening 48, 50 is fully covered. Hooper, Jr. further discloses that openings 48, 50 can be covered by doors 35a, 35b (column 4, lines 36-37).

Consequently, even if one skilled in the art were motivated to combine the teachings of Gullino, Peterson and Hooper, Jr., the Applicant’s invention would not result.

In addition, Gullino, Peterson and Hooper, Jr. include no teaching or suggestion that the various elements of the references ought to be combined to produce the Applicant’s invention. In particular, Gullino, Peterson and Hooper, Jr. include no teaching or suggestion that one skilled in the art would combine two hingedly attached doors to cover less than one hundred percent of a top opening of a housing. The Applicant has previously presented pertinent legal authorities in these Remarks, and the applicable principles pertaining to combining references, and the Applicant incorporates that presentation here by this reference.

Furthermore, as noted above, Gullino, Peterson and Hooper, Jr. include no teaching or suggestion that multiple doors would “better enable the handler to reach and manipulate the animals as needed during treatment.” The Examiner’s purported motivation to combine references is not found within the references. The Applicant’s own disclosure is the only place in the evidentiary record before the Examiner that includes any motivation to incorporate two top panels that, when in the closed position, cover less than one hundred percent of the top opening of the housing. As already noted, the Applicant’s own disclosure may not be used as a blueprint to reconstruct the claimed invention from the prior art, nor may the Examiner’s subjective belief be used to support motivation to combine references. In re Lee, 61 USPQ2d at 1434.

Syringe cradle

Claims 4, 5, 10, 12 and 13 recited a syringe cradle. Although claims 4, 5, 12 and 13 have been cancelled, claims 1 and 11 have been amended to recite a syringe cradle, and claim 10 continues to recite a syringe cradle. The Examiner rejected claim 4, asserting that Gullino discloses a syringe cradle 31, 38. The Examiner rejected claims 5, 10, 12 and 13 as being unpatentable over Gullino in view of Wyatt et al. In particular, the Examiner asserted that Gullino discloses a fluid container support coupled to the housing, and further discloses a syringe cradle 31, 38. The Examiner acknowledged that Gullino does not disclose the syringe cradle coupled to the fluid container support. The Examiner asserted, however, that Wyatt, et al. discloses a syringe cradle coupled to a fluid container support, and that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Wyatt et al. with the invention of Gullino “in order to save space within the treatment area, and to closely monitor both elements most conveniently.”

The Examiner is mistaken with regard to the teaching of Gullino. In the Applicant’s Application, a “syringe cradle” supports a syringe. Gullino does not mention a syringe, or any structure that supports a syringe. Accordingly, Gullino does not teach the use of a syringe cradle. The Examiner’s reliance upon Gullino is therefore inappropriate.

In order to rely upon a reference as a basis for rejection of the Applicant’s invention, the reference must be either in the field of the applicant’s endeavor or, if not, reasonably pertinent to the particular problem with which the inventor was concerned. In re Oetiker, 24 USPQ2d at 1445. If an inventor would not be motivated to inquire in the field in which the Examiner found the reference, then the reference does not support a prima facie case of obviousness. Id. at 1445-46.

Wyatt et al. does not satisfy the Oetiker test. Wyatt et al. is not concerned with medical treatment for confined animals. Instead, Wyatt et al. is directed to the context in which a physician wishes to monitor a human patient’s cardiac output. There would have been no reason for a person of ordinary skill, designing a confinement/treatment apparatus for an animal, to look to Wyatt et al. for a solution.

The Examiner noted advantages of the Applicant’s invention, namely, the saving of space in a treatment area, and convenient monitoring of fluid administration. The Examiner found

those advantages from examination of the Applicant's own application and figures, however, and not in the cited references. A motivation for saving space in a treatment area is not discussed in Wyatt et al. or in Gullino, and neither is efficient monitoring. The Examiner's purported motivations to combine references are not found within the references, and the Examiner's subjective belief be used to support motivation to combine references. In re Lee, 61 USPQ2d at 1434.

Grate covering a window

Claim 6 recites a window defined by the front panel, the apparatus further comprising a grate covering the window. The Examiner rejected claim 6 as unpatentable over Gullino in view of Peterson. The Examiner asserted that Gullino discloses a window 14, and acknowledged that Gullino does not disclose a grate covering the window, as recited in claim 6. The Examiner asserted, however, that Peterson teaches a grate and that it would have been obvious to one of ordinary skill in the art to combine the teaching of Peterson with the invention of Gullino "in order to create a cage which would not restrict airflow to the animal."

Claim 6 depends upon claim 1, which is in condition for allowance. Accordingly, claim 6 is also in condition for allowance.

Furthermore, the combination of Gullino and Peterson is inappropriate. Gullino does not disclose a window, but rather discloses a cage made of a clear material such as plexiglass (column 2, lines 17-20, FIGS. 1-2). Peterson does not disclose a grate on a window, but rather discloses a cage made of rectilinear wire mesh (column 2, lines 54-55). One skilled in the art would not combine a piece of transparent material such as plexiglass with wire mesh to create a window covered by a grate. Consequently, even if one skilled in the art were motivated to combine the teachings of Gullino and Peterson, the Applicant's invention would not result.

Once again, the Examiner's stated motivation to combine references, i.e., to avoid restriction of airflow to the animal, is not found within the prior art. Neither Gullino nor Peterson refers to airflow. Because the motivation to combine is not present in the references, the references cannot be combined.

Conclusion

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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VERSION SHOWING CHANGES PURSUANT TO 37 CFR § 1.121(c)(ii)

1. (Amended) An apparatus comprising:

a housing comprising a front panel, a rear panel, a bottom panel, and two side panels, the housing being sized to receive an animal; [and]

a fluid container support coupled to the housing; and

a syringe cradle coupled to at least one of the housing and the fluid container support.

11. (Amended) An apparatus comprising:

a housing sized to receive an animal and to confine the animal during therapeutic treatment; [and]

a fluid container support coupled to the housing; and

a syringe cradle coupled to at least one of the housing and the fluid container support.

16. (New) The apparatus of claim 1, further comprising a post coupled to the housing, the post supporting the syringe cradle.

17. (New) The apparatus of claim 1, wherein the fluid container support is crook-shaped.

18. (New) The apparatus of claim 11, further comprising a post coupled to the housing, the post supporting the syringe cradle.

19. (New) The apparatus of claim 11, wherein the fluid container support is crook-shaped.